

REMARKS

This Amendment is being filed in response to the Final Office Action mailed on August 4, 2011, and the Advisory Action of October 27, 2011 which have been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

Claims 15, 18, 19, 30 and 33-35 are pending in the application, where claim 15 and 30 are independent.

The undersigned would like to thank the Examiner for the courtesies extended during telephone call conducted on November 2, 2011, where as a result of which independent claims 15 and 30 have been amended to better distinguish them over the cited prior art.

In the Final Office Action, claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,708,037 in view of U.S. Patent No. 6,973,062 (Han) and U.S. Patent No. 5,638,412 (Blakeney). The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed, particularly in view of the present amendments to the claims. However, it is respectfully submitted that Applicants will consider filing a terminal disclaimer, if necessary in view of any allowable claims, upon indication that the present application is otherwise allowable or includes allowable claims.

In the Final Office Action, claims 15, 18, 19, 30, 33-36 and 41 are rejected under 35

U.S.C. §103(a) over U.S. Patent No. 6,973,062 (Han) in view of U.S. Patent No. 5,638,412 (Blakeney). This rejection is respectfully traversed. It is respectfully submitted that the claims are patentable over Han and Blakeney for at least the following reasons.

As discussed during the telephone call conducted on November 2, 2011, it is respectfully submitted that Han, Blakeney, and combination thereof, do not disclose or suggest the present invention as recited in independent claim 15, and similarly recited in independent claims 30 and 16 which, amongst other patentable elements, recites (illustrative emphasis provided):

wherein the indicated highest available data rate of at least one available random access channel is lower than a highest data rate that is available to the at least one random access channel, based on a potential future demand for capacity.

Accordingly, it is respectfully requested that independent claims 15 and 30 be allowed. In addition, it is respectfully submitted that claims 18, 19 and 33-35 should also be allowed at least based on their dependence from independent claims 15 and 30, as well as for the separately patentable elements contained in each of the claims. Accordingly, separate consideration of each of the dependent claims is respectfully requested.

In addition, Applicants deny any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, Applicants reserve the right to submits further arguments in support of the above stated position, should that become necessary. No arguments are waived and

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none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,



By _____
Dicran Halajian, Reg. 39,703
Attorney(s) for Appellant
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THORNE & HALAJIAN, LLP
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101